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SUBJECT: VIETNAM'S DISTRIBUTION SECTOR READIES FOR FOREIGNERS

REF: A) Hanoi 451 (Door Widens On Distribution);
B) Hanoi 1139 ("Reviewing The Trade Agenda");
C) 07 Hanoi 1918 (Gains in Provincial Competitiveness)

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¶1. (U) Summary. In less than two months, Vietnam will open its distribution and retail sectors to fully foreign-owned firms. Preparations for these important changes have not been problem-free, and both the GVN and the private sector have at times seemed to talk past each other. There is also a vocal domestic sector that is lobbying for less-than-wide opening. Despite these challenges, Vietnam's authorities appear to have readied the most important adjustments to welcome foreign firms to the local market. End Summary.

READY FOR THE OPENING

¶2. (SBU) The distribution sector, which includes retailing and franchising along with wholesale distribution services, will open on January 1, 2009 to fully foreign-owned firms. Many U.S. businesses have expressed interest in this sector, especially because it will allow them to organize and control their supply chains. Although the Mission does not know of any U.S. retailer interest yet, dozens of other large U.S. firms interested in sales of cars, engines, fertilizer and feed, and toiletries and consumer products, are poised to enter the market or expand existing operations. Some of these firms already have their licenses ahead of the opening date.

¶3. (U) Officials from the Ministry of Industry and Trade in Hanoi and some of the most business-intensive provinces in the south told Mission Econoffs that they would be ready "from day one" to allow foreign firms to engage in distribution-sector activities. Ho Chi Minh City's licensing officers, who probably issue more new business licenses than any other jurisdiction in Vietnam, told us that they would be taking applications from mid-November in order to have them ready for the January 1, 2009 opening. The head of the city's Planning and Investment Department, which will review and issue the applications, said that they could look at applications "even sooner" on an advisory basis, in order to ensure that everything would be in order and forestall bureaucratic delays.

EARLY OPENING FOR MANY

¶4. (SBU) Many U.S. firms already have obtained their licenses. One of the three big U.S. automakers got its license in November while a large commodities trader has been distributing and selling feed

directly to end-users since earlier this year. In fact, since March 2009, many fully foreign-owned businesses have been allowed to import their goods and then look for buyers in-country (although not sell them to the end-users), an early opening that was little understood and the source of many complaints from those who took it as a restriction rather than the concession it really was (REF A).

DISPELLING FEARS ABOUT THE ENT

15. (U) Another source of misplaced angst has been the "Economic Needs Test" (ENT). In theory, when businesses apply to open a second "retail outlet" they need to show that they have adequate facilities and surrounding infrastructure to support their intended operations. In many ways, this operates like American-style zoning. Businesses also have to present an economic impact statement addressing areas like "market stability" and "project suitability." The requirement of an economic impact statement for prospective businesses --in essence what the ENT amounts to-- predates Vietnam's entry into the WTO. These statements have been required from prospective investors for over a decade, seemingly without much controversy.

16. (U) Both the zoning-like requirements and the economic impact are contained in the "master plans" that all regional governments have in place. These plans are a hybrid of modern zoning laws and Communist-era central planning, and combine infrastructure capacities with notions of "ideal" or "suitable" business development. Although the term "ENT" appears in Vietnam's WTO Schedules (the result of negotiations with the Europeans, who use ENT), the Government of Vietnam does not use the ENT term as such. Nor, it seems, does it understand it fully.

17. (SBU) To date, the economic impact or ENT concept has been used sparingly in the distribution sector and, as far as we know, without

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detriment to either U.S. or foreign firms (REF B). The Mission also is not aware of cases where impact statements have posed significant obstacles to investors in other sectors. An American lawyer, with a British law firm in Hanoi, noted that businesses can expect a slight uptick in red-tape whenever a new sector opens. "Some [licensing] authorities are less confident whenever a new sector is concerned," he said, but added that it is just as often the case that aggressive provinces will march ahead and take the most business-friendly interpretations possible until a widespread practice establishes itself.

LIMITED USE OF IMPACT STATEMENTS AND ENT

18. (U) In the distribution sector, the Ministry of Industry and Trade in Hanoi has so far limited impact statements to "large retail establishments," like shopping centers and hyper-stores. Provincial authorities in both HCMC and Binh Duong, two of Vietnam's most business-intensive provinces (REF C), told us that they too were applying ENT to this limited range of businesses.

19. (SBU) Even in the case of large retail establishments, we were told by both public and private sector contacts, impact statements or ENTs are hardly ever problematic. An American lawyer who works for a Vietnamese law firm told us that, even among his foreign retail sector clients (none American), overcoming an impact statement or ENT comes low in the priority list. Provincial authorities in Binh Duong could also not recall instances where investors' plans came into conflict with their master plans. "The master plans are revised frequently," they said, explaining that these are often more notional than actual guidelines. The proliferation of foreign retail stores in Vietnam's largest metropolitan centers further attests to this.

ALL BUT LOCAL RETAILERS ARE MOVING ON

110. (SBU) Although an American law firm and even the AmChams at first lobbied for regulations defining ENT, they seem to have moved

on. "It's now academic," the managing partner of the law firm told us. When we asked about the subject, the head of AmCham in HCMC replied that he did "not recall what happened to that issue." Ironically, one sector that has not moved on is Vietnam's domestic retailers. In September, an association of Vietnamese retailers vowed to present the Trade Ministry with draft regulations on ENT to slow down foreign penetration of their market. Trade Ministry officials, however, have assured Embassy that nothing will come of these efforts and they do not anticipate further regulations for the sector's opening.

COMMENT: ELIMINATE NOT REFORM, THE ENT

11. (SBU) The important distribution sector appears ready for opening in 2009. It has no doubt benefitted from the partial opening of the last year and the many interactions that the GVN has had with the private sector to fix and tweak the sector. Post has continued to suggest to the Trade Ministry, most recently on November 10, to eschew the economic impact and ENT concepts altogether and move to a completely neutral zoning system, a proposal to which officials appear to be receptive. Domestic retailers may now pose the biggest threat to foreign penetration of this sector. The Mission will continue to monitor implementation and continue to work with the USG interagency community and the private sector to overcome obstacles as they arise. End Comment.

12. (U) This telegram was coordinated with ConGen Ho Chi Minh City.

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